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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
 LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
 CITISTAFF SOLUTIONS, INC.; WEST
 VALLEY STAFFING GROUP;
 CHARTWELL STAFFING SERVICES, INC.;
 and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**JOINT FURTHER PRETRIAL
 CONFERENCE STATEMENT**

Date: September 21, 2021

Time: 3:00 p.m.

Courtroom: 2, 17th Floor

Judge: Hon. William H. Orrick

Trial Date: September 27, 2021

Complaint filed: October 16, 2017

TO THE HONORABLE COURT:

The Parties submit this further Joint Pretrial Conference Statement pursuant to the Court's Trial Notification Order of September 9, 2021 to identify any issues to address at the Conference of September 21, 2021:

1. The Parties stipulate to appearance via Zoom at the September 21, 2021 Conference.

2. Per the Court's May 22, 2020 Order, the parties met and conferred regarding limiting the language they will use in reference to the Demetric Di-Az's specific crimes. The parties could not come to an agreement regarding the language to be used.

Plaintiff Position: Plaintiff proposes "felonies" or "robberies." Plaintiff objects to the adjective "serious" because it causes conjecture as to the nature of the crimes. By focusing on the crimes that were charged, Defendant misrepresents the nature of the crimes to which Plaintiff plead guilty, none of which include use of a firearm. Demetric Di-Az plead guilty to three counts of robbery (Cal. Penal C. 211) based on a single event robbery of a Domino's Pizza place. The plea did not include an aggravating factor for use of a firearm as it clearly says "PC 211 x 3." (See Ex. 378.) With respect to the Court's May 22, 2020 Order (Dkt. 207) on this issue, the Court stated: "The parties should reach an agreement on the language they will use in the presence of the jury (i.e., "serious felonies")." Perhaps the Court would consider "three felonies for the same event" or "three counts of robbery for the same event."

Defendant Position: Defendant proposes "**serious felonies**" (which the Court proposed in its May 22, 2020 Order) or "**violent felonies**," based on the charges against Mr. Di-Az, with Count 1 being committed with a firearm, causing the above offense to become "serious felony pursuant to Penal Code section 1192.7(c)(8) and a violent felony within the meaning of Penal Code section 667.5(c)(8)," and the second count to be "in violation of PC211, a Felony." Defendant does not misrepresent Plaintiff's guilty plea in describing the crimes with which Mr. Di-Az was charged.

3. The Parties have agreed that certain witnesses will testify remotely and agree to advise opposing counsel of these witnesses at least 2 court days before they testify. Specifically,

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1 Plaintiff has advised that Charles Mahla, Amy Oppenheimer, and Nigel Jones would be
2 testifying remotely. Annalisa Heisen is on maternity leave and unable to travel during the time of
3 trial and Defendant has requested, and Plaintiff has agreed that he will advise what date Plaintiff
4 intends to call her so she can make arrangements to testify.

5 4. One witness Joyce Delagrande will be traveling/flying in to testify and she will
6 need to testify on the morning of October 1, 2021 given her travel schedule. Plaintiff does not
7 object to this scheduling issue.

8 5. One witness, Erin Marconi, the former Tesla HR person who received some of the
9 complaints by Owen Diaz, cannot be located at this time. Ms. Marconi was served at her
10 deposition for trial on March 2, 2020. At her deposition, Ms. Marconi and her counsel Ms.
11 Kennedy agreed if the trial were continued to May 2020, plaintiff could serve her counsel.
12 Defense counsel was not authorized by the witness, who is not a Tesla employee, to accept
13 service beyond the then-potential May 2020 trial date. Plaintiff's counsel asked for Ms.
14 Marconi's address, and defense counsel has provided the last known address, phone number, and
15 email, but the address Defense counsel provided was from 2017 in Pleasanton, California when
16 she worked for Tesla in the Fremont Factory. At the time of her deposition, Ms. Marconi was
17 living in the Los Angeles area. Plaintiff has reviewed her LinkedIn page and is trying to locate
18 her and serve her. Defense counsel is also attempting to locate Ms. Marconi. Plaintiff proposes
19 that if she cannot be served by Wednesday, September 22, 2021, the Court permit the parties to
20 designate her testimony to be read or played to the jury as her deposition was videotaped; if the
21 parties designate her testimony to be read or played, they must do so 2 days in advance to permit
22 the opposing party to object.

23 6. Another witness, Monica DeLeon, worked as a Staff Supervisor for Citistaff
24 Solutions, Mr. Diaz's staffing agency. At deposition (158:21-1:3), Aaron Rutschman of the law
25 firm Constangy Brooks, in his capacity as CitiStaff's prior counsel, and Ms. DeLeon agreed that
26 Plaintiff could serve Mr. Rutschman in lieu of providing an address. CitiStaff later changed
27 counsel to Lafayette & Kumagai. We are waiting for a status report from Constangy Brooks to
28 determine if they will accept service for Ms. DeLeon.

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1 7. The parties agree to give notice of the witnesses to be called “no later than 2:00
2 p.m. the court day before the testimony is expected” pursuant to the Court’s most recent trial
3 setting order.

4 8. If the Parties are going to use any demonstratives during opening statements they
5 will exchange no later than 5:00 p.m. on September 22, 2021 pursuant to the Court’s Scheduling
6 Order to ensure there are no objections. Should a party object to a demonstrative exhibit, the
7 parties agree to submit any objections to the Court no later than noon on September 23, 2021 in
8 order to enable the Court to resolve any objections by September 24, 2021.

9 9. Plaintiff asks the Court for clarification on designated discovery responses. Both
10 parties have designated discovery from dismissed parties. Plaintiff believes that only discovery
11 between the parties who are still part of the case should be introduced into evidence. Plaintiff
12 would like guidance from the Court on this issue. Contrary to Defendant’s representations,
13 Plaintiff will agree to a ruling by the Court that Discovery between the parties and dismissed
14 parties would not be admissible. Defendant objects to Plaintiff’s request to selectively exclude
15 discovery from dismissed parties, and believes the admission of discovery should be subject to
16 typical evidentiary rules. Plaintiff intends to introduce exhibits produced by dismissed parties in
17 discovery, call several witnesses employed by and who were 30(b)(6) witnesses of former
18 parties, and introduce the deposition taken during discovery of a dismissed plaintiff; although
19 Plaintiff has not identified the specific discovery seeks to exclude from the dismissed parties,
20 Defendant does not believe there is any basis to exclude all discovery wholesale from dismissed
21 parties particularly where Plaintiff seeks to prevent only Defendant from introducing said
22 discovery.

23 10. Plaintiff notes that numerous depositions were designated prior to the 2020 trial
24 date. Plaintiff does not intend to use his designations as to all witnesses who are testifying either
25 in person or by zoom/video conference. Plaintiff has revised these designations with respect to
26 Kevin McGinn (CFO for NextSource) because his testimony is too lengthy in light of the time
27 limits. Plaintiff has provided a revised designation to Defendant and given Defendant 24 hours
28 to make any applicable objections prior to the Pretrial Conference on September 21, 2021,.

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1 11. Finally, there is the issue of designated testimony of Mr. Demetric Di-Az.
2 Demetric Diaz is in prison right now so is unavailable.

3 Plaintiff's Position: This testimony was previously designated by Defendant, to which
4 Plaintiff only objected to certain bits of testimony not at issue here. With respect to FRE
5 804, given Defendant's insistence on introducing evidence of Demetric Di-Az's felonies,
6 that in itself establishes Mr. Di-Az's unavailability.

7 Defendant's Position: The Parties wish to discuss Mr. Di-Az's testimony at the Pretrial
8 Conference. Defendant objects to the use of Demetric Di-az deposition testimony at this
9 time insofar as Plaintiff has failed to comply with FRE 804.

10 12. Finally, the parties submitted a joint questionnaire for prospective jurors to fill
11 out. The Court previously indicated that it would ask jurors to fill out the questionnaire the day
12 before jury selection so the parties would be able to review the questionnaires prior to jury
13 selection. The parties request guidance on how the Court wants the parties to copy the
14 questionnaires and if the parties will have access to the questionnaires before September 24,
15 2021.

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23

24 DATED: September 20, 2021

25 By: /s/ Lawrence Organ

26 Lawrence A. Organ, Esq.

27 J. Bernard Alexander, Esq.

28 Navruz Organ, Esq.

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DATED: September 20, 2021

Bv /s/ Tracey Kennedy
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